

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0580 RO

**Responsible Officer
Sales and Use Tax
For Tax Period: 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Responsible Officer Liability – Duty to Remit Sales and Use Taxes

Authority: IC 6-2.5-9-3; Indiana Department of Revenue v. Safayan (1995) 654 N.E.2nd 270.

Taxpayer disputes the determination that he had a duty to remit the corporation's sales and use taxes.

STATEMENT OF FACTS

In the process of closing down the business, Taxpayer wrote a check to the Indiana Department of Revenue to satisfy final corporate sales and use tax liabilities. The check was returned due to insufficient funds. The Indiana Department of Revenue assessed the liabilities against Taxpayer as a responsible officer of the corporation. Taxpayer timely protested this assessment. More facts will be provided as necessary.

RESPONSIBLE OFFICER LIABILITY-DUTY TO REMIT SALES AND USE TAXES

DISCUSSION

The proposed sales and use tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Pursuant to Indiana Department of Revenue v. Safayan (1995) 654 N.E. 2nd 279, page 273: "The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid." Taxpayer was a Senior Vice President of the corporation and served as corporate secretary and general counsel. He always had the power to sign checks. Taxpayer, as the last remaining employee of the corporation, was winding up the affairs of the corporation when he signed and remitted a check to the Indiana Department of Revenue. The check, which was to satisfy the remaining corporate sales and use tax liability, was returned due to insufficient funds. As Senior Vice President and sole employee of the corporation, Taxpayer clearly had the authority to see that the taxes were paid at the time he remitted them. Therefore, at that moment, he was a responsible officer of the corporation with the duty to remit the taxes. Taxpayer contends that when he wrote the check there were adequate funds to pay the check. During the period between remission of the check and payment of the check, the corporation's landlord garnished the corporate bank account without notice to satisfy rent liabilities. The fact that another creditor's garnishment action depleted the corporate bank account does not erase the corporate or responsible officer duty to satisfy Indiana sales and use tax liabilities.

FINDING

Taxpayer's protest is denied.